

REMARKS

Status of the Claims

Claims 5, 14, 17, 19, 24, 31-40, 46, and 47 are canceled. Claims 3, 11-13, 15, 16, 21-23, 25-30 and 41 - 45 are withdrawn from consideration. Claims 1, 2, 3, (15), (16), (18), 20, (21), (22) and (26) are amended. New claims 48-50 have been amended. The amended and new claims do not introduce new matter into the above-identified application. Support for the amended and new claims may be found throughout the specification. Claims 1-4, 6-10, 15, 16, 18, 20-22, 26 and 48-50 are under examination.

Although currently pending claims 3, 15, 16, 18, 21, 22 and 26 have been withdrawn by the Examiner in a restriction requirement, these claims have been amended by the present amendment to address the cancellation of claim 14.

Rejections Under 35 U.S.C. § 102

Claims 1, 2, 4-10, 14, and 17-20 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent Number 5,782,919 to Zdeblick et al. ("*Zdeblick*"). In view of the above amendment, Applicants respectfully assert that the rejection is obviated.

The PTO states that *Zdeblick* discloses "the same invention being a metal vertebral body replacement comprising a body 10, top and bottom surfaces 22 having windows 24 and 25, arcuate growth hole faces having through holes 27, continuous grooves 29 on top and bottom surfaces that are parallel to planar surface 12, serrations 18 and 19 that extend onto both top and bottom surfaces and a rounded anterior face shown best as the tip in figure 5 having tapered rounded edges which aid in insertion. *Zdeblick* further disclose use of a second identical implant for insertion along side the first." In addition, the PTO states that "In regard to claim 9 the invention of *Zdeblick* must be looked at in a different way than discussed above. *Zdeblick* discloses a vertebral body replacement

comprising a body 10, top and bottom surfaces (shown near reference numbers 27 and 18) having window 27, arcuate growth hole faces 22 having 4 through holes 24 and 25, continuous grooves located between the serration 18 and 19 on top and bottom surfaces that are parallel to planar surface 12.” Applicants respectfully disagree. The notches 29 of *Zdeblick* are not the grooves of the claimed invention. First, the notches 29 of *Zdeblick* are **not oriented in the same direction** as the guiding groove of the claimed invention. At least one groove of claim 1 is elongated extending along the top, parallel to the planar face that opposes an arcuate face. The notches 29 of *Zdeblick* do not exhibit these defined orientations. Second, the notches 29 of *Zdeblick* are **not located on the same face** as the guiding groove of the present invention. At least one groove of the claimed invention is elongated and “extends along” the top of the body where there is at least one protrusion. *Zdeblick*’s notches 29 are not so located. Third, *Zdeblick* does not teach a flat growth hole face and opposing, arcuate growth hole face.

Zdeblick therefore, for at least the aforementioned reasons, does not teach or suggest the grooves of Claim 1 of the present invention and, therefore, fails to teach each and every element of the claimed invention. The dependent claims are allowable either because they are dependent from allowed claim 1 or because they add further patentable limitations. Accordingly, Applicants respectfully request that the rejection of Claims 1, 2, 4-10, 14, 18 and 20 under 35 U.S.C. § 102(b) as being anticipated by *Zdeblick* be withdrawn.

Notice under MPEP 2001.06(b) – Related Co-pending U.S. Applications

Applicant also requests that the Examiner review applications below-listed co-pending patent applications:

U.S. Patent Application No. 10/403,598, filed March 31, 2003

U.S. Patent Application No. 10/923,499, filed August 20, 2004

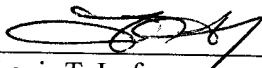
CONCLUSION

In view of the above remarks, Applicants respectfully assert that the rejections set forth in the Office Action have been fully addressed and overcome. Hence, Applicants assert that all Claims are in condition for allowance and request that an early notice of allowance be issued for claims 1-4, 6-10, 15, 16, 18, 20-22, 26 and 48-50. If issues may be resolved through Examiner's Amendment, or clarified in any manner, a call to the undersigned attorney at (404) 962-7523 is respectfully requested.

No fees are believed due, however, the Commissioner is hereby authorized to charge any deficiencies that may be required, or credit any overpayment to Deposit Account No. 09-0528.

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